

### **REMARKS**

Claims 36, 37 and 54-72 are pending in this application, with claim 36 being an independent claim. By this amendment, claim 36 has been amended. Support for the amendment of claim 36 can be found throughout the specification (e.g., on page 22, lines 9-12 and 28-33 and page 23, lines 7-11 and 27).

No new matter has been added.

#### **Rejections Under 35 USC §112**

The Examiner has rejected claims 36, 37 and 54-72 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner has argued that the phrase “based on” is vague and indefinite.

Although the Applicant maintains that the phrase “based on” is not vague and indefinite and would be sufficiently clear to one of ordinary skill in the art due to the plain meaning of the phrase in the context of the claims and the teachings provided in the instant specification, claim 36 has been amended in the interest of expediting the prosecution of this application. Therefore, the rejection of the claims on this basis is now moot.

Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection of claims 36, 37 and 54-72 under 35 USC §112, second paragraph.

#### **Rejections Under 35 USC §102**

The Examiner has rejected claims 36, 54, 55, 57, 61, 62, 65 and 69 under 35 U.S.C. §102(e)(2) as being anticipated by Filvaroff et al. (U.S. Patent No. 6,734,288 B2). The Examiner contends that the teachings of Filvaroff et al. anticipate the limitations of the rejected claims.

Applicant respectfully traverses. The Examiner has based this rejection on the description of computer programs that can be used to determine amino acid and nucleic acid sequence identity, illustrations of comparing polypeptide amino acid identity, and the mere mention of “antigen-complex” at column 6, lines 5-6. (Applicant notes that the teachings at column 31, lines 29-30 and 39-42, and column 95, lines 62-64, cited by the Examiner to presumably further demonstrate the teaching of an antigen, merely provide antibodies and fragments thereof directed to the polypeptides provided by Filvaroff et al.) Applicant maintains

that the teachings of Filvaroff et al. as cited by the Examiner do not support a conclusion of anticipation.

Filvaroff et al. do not perform a single analysis of a polysaccharide, do not mention that such an analysis could or should be done and do not teach how to perform such an analysis. This falls far short of being sufficient to sustain an anticipation rejection. To be considered an anticipatory reference, the reference must provide each and every limitation of the claims, and the reference must also be enabling. The teachings of Filvaroff et al. do not satisfy these requirements for at least the reasons provided herein.

The teachings of Filvaroff et al. do not provide a method for determining whether monosaccharides or disaccharides of a query sequence match monosaccharides or disaccharides of a polysaccharide as in Applicant's claims. Rather, the teachings of Filvaroff et al. are directed to polypeptides and the nucleic acids that encode them as well as polypeptides and nucleic acids that have sequence identity to the polypeptides and nucleic acids directly disclosed. Teachings that polypeptide and nucleic acid sequence identity can be determined are provided; however, none of the teachings suggest the analysis of polysaccharides or provide how polypeptide and nucleic acid analyses can be extended to the analysis of polysaccharides.

In addition, the Examiner asserts, that the term "antigen-complex", recited at column 6, lines 5-6 of Filvaroff et al., represents monosaccharides or disaccharides of a polysaccharide and, therefore, according to the Examiner, anticipates Applicant's claims. Applicant disagrees with this assessment. The term as provided in the reference cannot be construed to represent monosaccharides or disaccharides of a polysaccharide. The Examiner is improperly importing limitations from Applicant's disclosure into the cited reference. Nowhere in Filvaroff et al. is it taught that an antigen-complex is a monosaccharide or disaccharide of a polysaccharide. In fact, the use of the term by Filvaroff et al. is at odds with the Examiner's characterization. The term as used by Filvaroff et al. is specifically meant in reference to a protein-protein interaction. The recitation of the term was merely included as part of an example of a protein-protein interaction as background to the description of a particular polypeptide that was discovered. This is not a teaching that the antigen-complex is a polysaccharide or that antigen-complexes that are polysaccharides can or should be analyzed.

All of the teachings of Filvaroff et al. are limited to amino acid and nucleic acid sequence analysis with no contemplation of polysaccharides. Filvaroff et al. cannot be deemed to teach or enable any method for the analysis of any polysaccharide, let alone the methods provided by

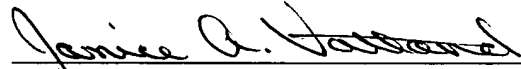
Applicant. Accordingly, the rejection of claims 36, 54, 55, 57, 61, 62, 65 and 69 under 35 U.S.C. §102(e)(2) is respectfully requested to be withdrawn.

**CONCLUSION**

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's representative at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,



Janice A. Vatland, Reg. No. 52,318  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, Massachusetts 02210-2206  
Telephone: (617) 646-8000

Docket No.: M0656.70055US00  
Date: May 24, 2005  
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